

REMARKS

The present amendment is in response to the Office action dated November 6, 2006, where the Examiner has withdrawn non-elected claims 5,8,12,13,23, 27, 29-34, 36, 38 and 39 from consideration, and has rejected and/or objected to the remaining claims. A terminal disclaimer and the associated fee accompany this amendment and deal with the provisional obviousness type double patenting rejection raised in this Office Action, as discussed below. Also accompanying this amendment is an Information Disclosure Statement bringing to the Examiner's attention some related co-pending applications as well as some references cited in a related application.

In the present amendment, claims 1,2,3,5,14,16,19,24, 29-35, 40, 45, and 46 have been amended and claims 15 and 20 have been cancelled without prejudice. Claims 1 to 14, 16 to 19, and 21 to 46 are pending in the present application with claims 1, 2, 35, 40, and 45 being the independent claims. Reconsideration and allowance of pending claims 1 to 14, 16 to 19, and 21 to 46 in view of the amendments and the following remarks are respectfully requested.

Election/Restriction

In the Office Action, the Examiner has required restriction between the species listed in paragraph 1, page 2, and requested affirmation of the provisional election of Species A which was made in a telephone conversation. Applicant hereby affirms the election of Species A, Figures 1-6, claims 1-4, 6,7, 9-11, 14, 16-19, 21, 22, 24 -26, 28, 35, 37, and 40 - 46. The Examiner states that claims 1-3, 7, 17, 18, 40 and 41 are generic. It is submitted that claims 45 and 46 are also generic. Amended independent claim 45 is of similar scope to claim 2, and both of these claims are generic to all species in this application. It is submitted that claims 1 to 3 and 40 as amended above are still generic to all species.

Claim Objections

In paragraph 4 of the Office Action, the Examiner objects to certain terminology in the claims as lacking antecedent basis. In the foregoing amendment, claim 1 has been amended so that the term "user support" is used consistently throughout the claim. Additionally, the term "at least one of the moving parts" has been replaced with "at least one of the user support, exercise arm, and connecting linkage". It is submitted that these amendments deal with the objections to claim 1.

In claims 24 and 29 to 34 the term “connecting link” has been changed to “connecting linkage” for consistency with claim 1. It is submitted that this amendment deals with the Examiner’s objection to claim 24 and takes care of similar wording in original claims 29 to 34.

It is submitted that the foregoing amendments deal with all of the Examiner’s claim objections.

Claim Rejections

35 USC §112

The Examiner has rejected claims 1-4, 6,7, 9-11, 14-22, 24-26, 28, 35, 37, 40-44, and 46 under 35 USC 112, second paragraph, on the grounds that certain terms in claims 1, 14, 15, 16, 19, 20, and 46 are indefinite. These rejections have all been dealt with in the foregoing amendment. Rejected claims 15 and 20 have been cancelled without prejudice.

Referring to claim 1, all references to location of the user engagement means relative to a user seated on the user support have been cancelled in the foregoing amendment, dealing with the rejection of this claim as indefinite. Similar amendments have been made in claims 2, 35, and 40 which have been rewritten independently in the foregoing amendment to incorporate the subject matter of original claim 1, from which they previously depended. It is submitted that claims 1, 2, 35, and 40 are no longer indefinite, and reconsideration and reversal of the rejection of claims 1, 2 and 35 and claims dependent thereon under 35 USC 112, second paragraph, is respectfully requested.

Similarly, claim 14 has been amended to take out references to location of the user support pivot mount and gravitational centerline relative to a user’s body, and instead refers to location of these elements relative to a user engaging region of the user support only. Claim 16 has been amended to define a greater portion of the user engaging region located in front of the gravitational centerline in the start position and approximately 50% of the user support located on each side of the gravitational centerline in the end position. It is submitted that these amendments deal with the Examiner’s rejections of claims 14 and 16. Paragraph 65 of the specification has been amended to provide antecedent basis for the term “user engaging region”, which comprises the user engaging back pad and seat pad as illustrated in the original drawings.

Claim 19 has been amended to take out reference to the user’s body and now defines the gravitational centerline position relative to the user support only, dealing with the Examiner’s rejection of this claim as indefinite.

Claim 46 has been amended to define the handle location relative to the back rest portion of the user support frame, taking out the previous reference to the head of a user seated on the user support. This deals with the Examiner's rejection of claim 46 as indefinite.

It is submitted that the foregoing amendment deals with all of the Examiner's claim rejections under 35 USC 112, second paragraph, and reconsideration and reversal of all claim rejections on this basis is respectfully requested.

Double Patenting

The Examiner has provisionally rejected claims 1, 2, 6, 14, 17-19, 21, 22, 24, 25, 28, 37, 45 and 46 on obviousness-type double patenting grounds. Accompanying this amendment is a terminal disclaimer and terminal disclaimer fee, dealing with this rejection. It is noted that there are no other prior art rejections of claims 2 to 4, 6, 7, 18, 26, 35, and 41 to 46. Claim 45 is an independent claim and should therefore now be in order for allowance, along with dependent claim 46. Claims 2 and 35 have been rewritten as independent claims in the foregoing amendment, and should also now be allowable, along with claims 3 to 7 which depend from claim 2. Claims 18, 26, and 41 to 44 depend from rejected claim 1, and should be allowable since it is believed that amended claim 1 is now in order for allowance, as explained above and below.

35 USC §102(b)- Huang

Claims 1, 9 to 11, 14 to 16, 19 to 22, 24, 25, 28, 37 and 40 have been rejected under 35 USC 102(b) as anticipated by U.S. Patent No. 5,643,147 (Huang). This rejection is hereby respectfully traversed, and it is submitted that amended independent claims 1 and 40 are fully distinguished from this reference, along with the remaining listed claims which depend from amended claim 1.

For a reference to anticipate a claimed invention, the reference must include each and every element of the claim. In rejecting claim 1, the Examiner contends that Huang has "a load 116, or the user", which resists movement of at least one of the moving parts of the machine. Reference number 116 of Huang refers to an air cylinder used only for damping purposes when the handle is released at the end of an exercise (see column 3, lines 42-43). It is the bodyweight W of the user alone in Huang which acts as the exercise resistance, as stated in column 3, lines 32 to 38. Therefore, Huang does not have any load separate from the user which resists movement of at least one of the user support, exercise arm, and connecting linkage, and amended claim 1 is not anticipated by Huang.

Claims 9 to 11, 14 to 16, 19 to 22, 24, 25, 28, and 37 depend from amended claim 1 and are distinguished from Huang for the same reasons as claim 1, and additionally since they define other elements not present in this reference. Referring to amended claim 14, the user support pivot 241 in Huang is not located under a user engaging region of the user support. Instead, pivot 241 is spaced from the user engaging region (support pad 22), and the gravitational centerline extending through pivot 241 does not extend through a user engaging region of the support 20 in any exercise position. In fact, since the user's weight provides the entire exercise resistance, it would be undesirable to position the pivot so that the gravitational center line passes through the user engaging region, since this would result in an undesirably large variation in resistance throughout the exercise. Claim 19 is additionally distinguished from Huang for the same reason as claim 14. Claim 16 depends from claim 14 and defines additional elements lacking from Huang.

Claim 40 has been amended and rewritten as an independent claim, and also defines elements which are lacking from Huang. In Huang, there are two sets of user engaging arms which must be actuated in order to perform an exercise. The user must first push down on the pedals 142 and then pull down the handle 322 in order to carry out an exercise, as described in column 3, lines 14 to 18. Huang does not describe or suggest an exercise arm with user engagement means for gripping by a user in performing a shoulder press exercise, in which the user engagement means comprise the only part of the machine actuated by a user in order to perform the exercise. It is therefore submitted that amended claim 40 is not anticipated by Huang.

In view of the foregoing amendment and argument, it is respectfully submitted that claims 1, 9-11, 14, 16, 19, 21, 22, 24, 25, 28, 37 and 40 are not anticipated by Huang, and reconsideration and reversal of the claim rejections based on this reference is respectfully requested.

35 USC §102(b)-Lee

Claims 1, 9, 10, 14, 15, 17, 19 to 22, 24, 25, and 37 have been rejected under 35 USC 102(b) as anticipated by U.S. Patent No. 5,722,918 (Lee). This rejection is hereby respectfully traversed, and it is submitted that amended independent claim 1 is fully distinguished from this reference, along with the remaining listed claims which depend from amended claim 1.

In Lee, the only exercise resistance is provided by the weight of a user, as the Examiner has noted, and there is no load separate from the user which resists movement of at least one of the user support, exercise arm, and connecting linkage. Additionally, the exercise carried out on Lee's

machine is not really a shoulder press exercise. Referring to Figures 9 and 10 and to column 4, lines 43 to 47, the pivoting of the exercise arm or handle bar exercises the muscles of the hands, legs, and abdomen, rather than the shoulder muscles as in a shoulder press. Amended claim 1 is therefore not anticipated by Lee.

The remaining claims listed above depend from amended claim 1 and are distinguished from Lee for the same reason as claim 1. Additionally, referring to claims 14 and 19, there is no suggestion in Lee that it is desirable for the gravitational centerline of pivot 36 to extend through the user engaging region of the user support (i.e. the region covered by the user support pad) throughout the entire exercise movement. In fact, seat pad 60 is adjustable along arm member 61 and in many possible positions the gravitational centerline of the pivot does not extend through pad 60 at all.

It is submitted that claims 1,9,10,14, 17, 19, 21,22, 24,25 and 37 are all distinguished from Lee, and reconsideration and reversal of the claim rejections based on this reference is respectfully requested.

CONCLUSION

It is believed that all of the claims remaining in this application are in order for allowance. All of the claims which have been withdrawn from consideration as directed to a non-elected invention now depend from a generic claim which is believed to be allowable. Claim 5 depends from amended independent claim 2, which should now be allowable in view of the terminal disclaimer filed herewith. The other withdrawn claims depend from amended claim 1, which is a generic claim and is now believed to be allowable for the reasons explained above. Since it is believed that amended generic claims 1 and 2 are now allowable, examination and allowance of the non-elected claims is respectfully requested.

As noted above, there are no prior art rejections of a number of the claims examined by the Examiner, other than the obviousness-type double patenting rejection which is overcome by the terminal disclaimer which accompanies this amendment. These are claims 2 to 4, 6, 7, 18, 35, and 41 to 46. These claims should also now be allowable by virtue of the amendments made to overcome the claim objections and rejections under 35 USC 112, second paragraph. Allowance of these claims is respectfully requested, in addition to examination and allowance of non-elected claim 5 which depends from allowable, generic independent claim 2.

Finally, allowance of all claims rejected as anticipated by Huang and/or Lee is respectfully requested in view of the foregoing amendment and argument.

It is believed that all claims remaining in this application, specifically claims 1 to 14, 16 to 19, and 21 to 46, are now in condition in all respects for allowance, and early notice to this effect is earnestly solicited. If the Examiner has any questions or comments regarding the above Amendments and Remarks or believes that a telephone conversation may be useful in advancing prosecution, the Examiner is invited to contact the undersigned at the number listed below.

Respectfully submitted,
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